



OIAD-37  
OIAD-66

9(2)(a)

Dear 9(2)(a)

Thank you for your emails of 20 May 2021 to the Ministry for the Environment (the Ministry) and 25 June 2021 to the Ministry for Primary Industries (MPI) and the Department of Conservation (DoC) requesting the following under the Official Information Act 1982 (the Act).

Your email of 20 May 2021:

*I wish to make an OIA request of the Ministry for the Environment, based on the statement recently provided by Stuart Brodie to the Environment Select Committee. Specifically: that "discussions are underway" to resolve the Kermadec Rangitāhua Ocean Sanctuary situation; that creation of the Sanctuary is "still a priority" for the Government; that the Government is pursuing a "reset" with iwi; that "talks with relevant parties are at an initial stage"; and that an "inter-agency group has just commenced interactions".*

*In light of Mr Brodie's statement, and under the Official Information Act, I seek the following information, in the form of official briefings, emails or meeting minutes:*

- 1. Any documents or information related to the discussions now 'underway' on the future of the Kermadec Rangitāhua Ocean Sanctuary*
- 2. Any documents (briefings, emails or reporting) outlining the "reset with iwi" and any record of the "relevant parties" that have been engaged in the reset conversation, and specifically, any information or reporting on dialogue with mana whenua iwi Ngāti Kuri and Te Aupouri, and the Trust Te Ohu Kaimoana, representing Māori fisheries interests.*
- 3. Any documents or information related to the inter-agency group that has been established to resolve the Kermadec Rangitāhua Ocean Sanctuary issues, including documents or communications identifying members and their competencies*
- 4. Any documents on other reporting on 'interactions' with parties associated with the Kermadec Rangitāhua Ocean Sanctuary, including but not limited to mana whenua, scientists and NGOs*
- 5. Any information on the timeframe and roadmap for the "reset with iwi" and Kermadec Rangitāhua Ocean Sanctuary announcement.*

The Ministry has interpreted your request as all documents held by the Ministry, and any correspondence between Government departments and parties involved in a reset of the relationship between the Crown and iwi/Māori with respect to the proposed Kermadec Ocean

Sanctuary from late 2017 up until the date of your request (20 May 2021). This reset commenced after the 2017 election.

Your emails of 25 June 2021 to MPI and DoC, requesting the following information, was transferred to our Ministry on 6 July 2021:

*Under the Official Information Act I am requesting from DOC, MPI (FNZ) and MfE the "draft Terms of Agreement for the Rangitāhua / Kermadec Sanctuary" and related correspondence and briefings.*

*The draft TOR is mentioned in the Te Ohu Kaimoana Q2 report (1/01/21 – 31/03/2021). On page 10 the report states:*

*" We have been reviewing a **draft Terms of Agreement for the Rangitāhua / Kermadec Sanctuary** with Crown officials for a Treaty compliant approach to establish a Sanctuary".*

The scope of your second requests to MPI and DoC are covered within the scope of the first request to the Ministry. Therefore, we are responding to all three requests in this letter.

The information you have requested has been withheld in full under the following sections of the Act:

- 9(2)(h) to maintain legal professional privilege
- 9(2)(j) to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations).
- 9(2)(f)(iv) to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials.
- 9(2)(g)(i) to maintain the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty.

In relation to point 3 of your first request, an interagency group was established to progress the proposed Rangitāhua/Kermadec Ocean Sanctuary. The group comprises officials from the Ministry, MPI/Fisheries NZ, DoC, Te Arawhiti, and advisors from the Department of Prime Minister and Cabinet and Crown Law. A list of the names and titles of the core members of this group is provided in Table 2 below. The group is supported by other staff from each agency as required. Documents, correspondence and information between this group and relevant parties have been withheld in full under section 9(2)(j).

In terms of section 9(1) of the Act, I am satisfied that, in the circumstances, the withholding of this information is not outweighed by other considerations that render it desirable to make the information available in the public interest.

Some information has been refused under section 18(d) of the Act as the information is publicly available. Links to this information have been provided for your convenience in Table 1 below.

You have the right to seek an investigation and review by the Office of the Ombudsman of my decision to withhold information relating to this request, in accordance with section 28(3) of the Act. The relevant details can be found on their website at: [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz).

Please note that due to the public interest in our work the Ministry for the Environment publishes responses to requests for official information on our [OIA responses page](#) shortly after the response has been sent. If you have any queries about this, please feel free to contact our Ministerial Services team: [ministerials@mfe.govt.nz](mailto:ministerials@mfe.govt.nz).

Yours sincerely



Glenn Wigley  
**Director – Policy and Regulatory**

**Table 1: Links to publicly available information**

Title	Link
Cabinet Papers and Briefings	<a href="#">Establishment of a Kermadec Ocean Sanctuary   Ministry for the Environment</a>
New Zealand Parliament Website releases on Kermadecs	<a href="#">Site Search - New Zealand Parliament (www.parliament.nz)</a>

**Table 2: Members of the interagency working group for the proposed Kermadec Rangitāhua Ocean Sanctuary**

Agency	Members
Ministry for the Environment	Glenn Wigley, Director
	Stuart Brodie, Principal Analyst, Marine Policy
	Monique Page, Analyst, Marine Policy
Fisheries New Zealand	Terry Lynch, Principal Analyst
Ministry for Primary Industries	Jeremy Schofield, Principal Advisor Fisheries and Aquaculture
Department of Conservation	Sam Thomas, Manager Marine Policy
Te Arawhiti	Kathryn Haliburton, Senior Analyst
For Department of Crown Law	Craig Linkhorn, Private Barrister



To: Hon David Parker, Minister for the Environment Hon Eugenie Sage, Minister of Conservation Hon Stuart Nash, Minister of Fisheries			Tracking #: 2017-B-04050 Other Agency #: DOC: 17-B-0956 MPI: B17-0818
<u>Security Level</u>	In Confidence and subject to legal professional privilege	Number of Attachments	One
Briefing Prepared by:	<b>Ministry for Primary Industries</b> Manatū Ahu Matua	 <b>Department of Conservation</b> Te Papa Atahua	
Date Submitted:	18/12/17	Response needed by:	N/A
MFE Priority:	Non-Urgent	Action Sought:	Noting

**Kermadec/Rangitāhua Ocean Sanctuary—Requested Advice** <sup>s 9(2)(j)</sup>  
s 9(2)(j)

(2017-B-04050)

**Key Messages**

1. The purpose of this briefing is to provide:

a. s 9(2)(j)

b. further information on the conservation benefits for establishing additional protections in the Kermadec region;

c. an outline of New Zealand's obligations under UNCLOS and the interplay with the Fisheries Act and broader Treaty rights; and

d. s 9(2)(j)

s 9(2)(j)

s 9(2)(j)

s 9(2)(j)

Released under the provision of  
the Official Information Act 1982

s 9(2)(j)



Released under the provision of  
the Official Information Act 1982

Released under the provision of  
the Official Information Act 1982

**Signature**



Glenn Wigley  
Director, Marine Environmental Risk and Science  
Ministry for the Environment



Peter Brunt  
Deputy Director-General, Policy & Visitors (acting)  
Department of Conservation



Jarred Mair  
Director, Sector Policy  
Ministry for Primary Industries

Hon David Parker  
**Minister for the Environment**

Date

**Ministry for the Environment contacts**

Position	Name	Cell phone	1 <sup>st</sup> contact
Principal Author	s 9(2)(a)	s 9(2)(a)	
Responsible Manager	Lou Hunt	022-066-8764	
Director	Glenn Wigley	027-491-7806	✓

Released under the provision of the Official Information Act 1982

Released under the provision of  
the Official Information Act 1982

**Kermadec/Rangitāhua Ocean Sanctuary—Requested Advice**

s 9(2)(j)

s 9(2)(j)

**(2017-B-04050)**

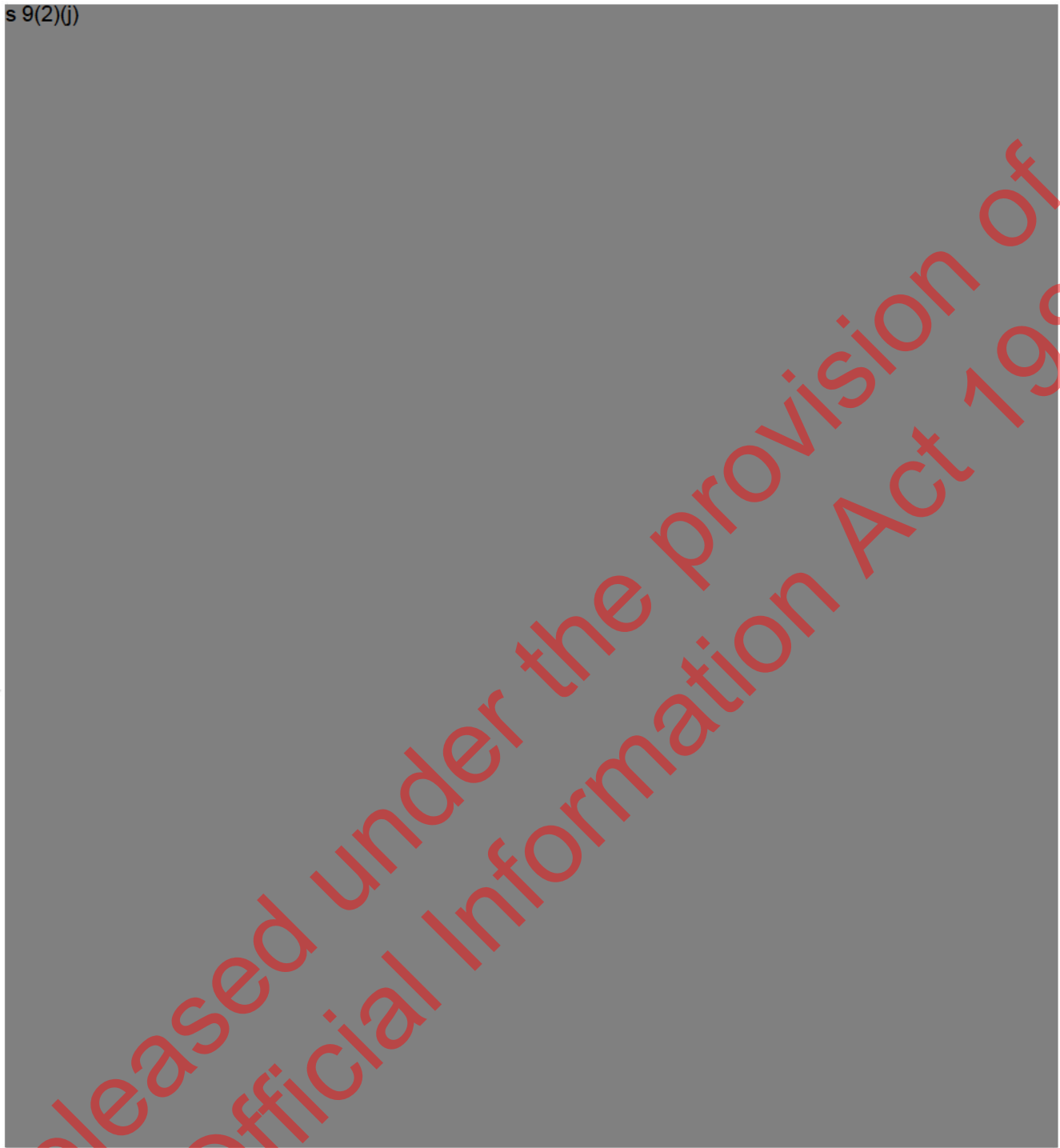
**Analysis and Advice**

s 9(2)(j)

Released under the provision of  
the Official Information Act 1982

Released under the provision of  
the Official Information Act 1982

s 9(2)(j)



**Additional Information**

s 9(2)(j)



## Conservation in the Kermadec Region

### *Existing Protections in the Kermadec Region*

45. The Kermadec Islands have been protected as a nature reserve since 1934 and the Territorial Sea around the islands has been protected by the Kermadec Islands Marine Reserve (KIMR) since 1991.
46. Covering 7,450 km<sup>2</sup>, the KIMR is New Zealand's largest marine reserve, and is large even by world standards. The KIMR extends 12 nautical miles from the line of Mean High Water Springs around the main Kermadec Islands. Because the Territorial Sea around each island do not all overlap (for instance, Raoul and Macauley Islands are 120 km apart), the reserve is discontinuous.
47. All fishing and other extractive industries are prohibited within the KIMR, as are other activities that interfere with or disturb marine life. However, because some limited fishing and other extractive activities may occur between the islands within the archipelago, there are gaps in protection between each of the island groups. The effect of this on pelagic species such as kingfish and sharks which can move between the islands is unknown, but currently is thought to be minor due to the limited amount of fishing occurring within the region, and the fact that no mining is occurring. However, the impact could increase if fishing within the area were developed.
48. The Kermadec Benthic Protected Area (BPA) was established in November 2007 under the Fisheries Act 1996 and prohibits trawling and dredging within 100m of the sea floor throughout the EEZ in FMA10. As a result, commercial fishing in the EEZ has been largely restricted to a small amount of surface longlining for HMS stocks, and some exploratory bottom lining for hapuku, bass and kingfish.

### *Conservation Values of the Kermadec Region*

49. The Kermadec Islands and adjacent seamounts support New Zealand's only truly subtropical intertidal and shallow subtidal marine ecosystems. The area within FMA10 contains several distinct underwater habitats and many of the species that live in the ocean around the Kermadec Islands exist only there, while others that pass through the region are critically endangered in other parts of the world (e.g. sea turtles).
50. The Kermadec region's endemic biodiversity and relatively unspoiled nature gives it a crucial role in ocean ecosystems, including as a migration route and safe haven for far-ranging species (e.g. seabirds, sharks, turtles and whales). This makes the region valuable to science and for furthering global understanding of our marine environment, ecosystems and the ocean's life-supporting processes.
51. The coastal waters of the Kermadec Islands are notable as one of the most pristine marine environments in the world, characterised by high abundance and biomass of large predatory fishes, notably Galapagos sharks, jacks and groupers. The Kermadec region contains the only essentially unfished population of spotted black grouper in the world. A more comprehensive description of the natural heritage values of the Kermadec Region is provided in **Appendix 3**.
52. Recent expeditions of the Tangaroa research vessel to the Kermadec region recorded 236 fish species. These included three that were likely new to science, 60 were new records for the Kermadec region and 20 were new to New Zealand's Exclusive Economic Zone. Much of the area is virtually unexplored and it is highly likely that future surveys will reveal new and rare marine species.

#### **International Obligations for Marine Protection**

58. The fishing industry has questioned the basis under international law for establishing the sanctuary. New Zealand's main international obligations relating to marine protection sit under the United Nations Convention on the Law of the Sea (UNCLOS) and the Convention on Biological Diversity (CBD).
59. Under UNCLOS, New Zealand has a range of rights, obligations and duties within its EEZ (Part V of UNCLOS). This includes sovereign rights for the purpose of exploring, exploiting, conserving, and managing the natural resources (living and non-living) of the EEZ. These rights must be exercised in a manner compatible with the provisions of UNCLOS, which include the obligation all States have to protect and preserve the marine environment (Article 192). Under Article 56, coastal States are specifically accorded jurisdiction "for the protection and preservation of the marine environment" within the EEZ.
60. Significant deference is paid to a coastal State's discretion in the exercise of its sovereign rights, as emphasised in Article 297(3) of UNCLOS, which includes an explicit exception to the compulsory dispute settlement mechanisms with respect to "any dispute relating to [the State's] sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulations".
61. The coastal State is also under no obligation to allow fishing in every part of the EEZ. Closed or "no-take" areas are commonly employed as a measure to conserve and manage resources and protect and preserve the marine environment.

62. A number of international agreements concluded since UNCLOS, including the CBD, underline the importance of the establishment of protected areas by States as a key means to conserve biological diversity.
63. Under the CBD, New Zealand has an obligation to, "as far as possible and as appropriate", "establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity", in addition to a range of other legal obligations related to the conservation and sustainable use of biological diversity.
64. International efforts to increase the coverage of marine protected areas have been reflected in global goals and targets, which are not legally binding. New Zealand supports these targets and the general goal of increased marine protection.
65. Under the CBD, Aichi Biodiversity Target 11 is: "By 2020, at least 17 per cent of terrestrial and inland water, and 10 per cent of coastal and marine areas, especially areas of particular importance for biodiversity and ecosystem services, are conserved through effectively and equitably managed, ecologically representative and well connected systems of protected areas and other effective area-based conservation measures, and integrated into the wider landscapes and seascapes." The Aichi Biodiversity Targets are a flexible framework for the establishment of national and regional targets.
66. Sustainable Development Goal 14 (SDG 14) under the 2030 Agenda for Sustainable Development, picks up the current Aichi target 11: "By 2020, conserve at least 10 percent of coastal and marine areas, consistent with national and international law and based on the best available scientific information."
67. There is an emerging international debate on the post-2020 target for the protection of marine areas. The September 2016 International Union for the Conservation of Nature (IUCN) World Conservation Congress adopted a resolution encouraging Parties to the CBD to develop a post-2020 target of protection of 30% of marine areas by 2030. The resolution also encouraged States to commit to working towards designating 30% of their national waters as marine protected areas by 2030. New Zealand abstained from this non-binding resolution.
68. In addition, New Zealand has ratified the United Nations Declaration on the Rights of Indigenous Peoples. We will seek further advice on how it relates to the establishment of the proposed Sanctuary.

*Relationship to Treaty Obligations and Requirements under the Fisheries Act*

69. There is broad discretion under international law for coastal States to fulfil their obligations consistent with other domestic policies and obligations, such as Treaty of Waitangi obligations. The Fisheries Act 1996 specifically provides (in section 5) that it is to be interpreted in a manner consistent with New Zealand's international obligations relating to fishing (which include the abovementioned obligations in UNCLOS, those contained in the UN Fish Stocks Agreement 1995, and regional fisheries management organisation obligations) and with the provisions of the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992.

s 9(2)(j)

s 9(2)(j)

#### **Consultation and Collaboration**

---

74. This briefing was prepared in collaboration with the Ministry for Primary Industries (MPI), and the Department of Conservation (DOC), and with input from the Ministry for Foreign Affairs and Trade (MFAT). Crown Law has reviewed the advice.

#### **Risks and mitigations**

s 9(2)(j)

#### **Legal issues**

---

s 9(2)(j)

#### **Next Steps**

---

s 9(2)(j)

## Appendices

s 9(2)(j)


**Appendix 2:** Background on the Treaty of Waitangi Fisheries Settlement and the role of Te Ohu Kaimoana

**Appendix 3:** Summary of Natural Heritage Values of the Kermadec Region

Released under the provision of  
the Official Information Act 1982

**Appendices**

s 9(2)(j)



Released under the provision of  
the Official Information Act 1982

Released under the provision of  
the Official Information Act 1982

## Appendix 2: Background on the Treaty of Waitangi Fisheries Settlement and the role of Te Ohu Kaimoana

1. In 1987 Māori sought and were granted an injunction preventing further implementation of the Quota Management System (QMS). Iwi claimed, and the Courts concurred, that the QMS, as then implemented, was arguably illegal because it adversely affected Māori rights to fisheries. Māori were excluded from participating in the fishery because the allocation of Individual Transferable Quota (quota) made no provision for Māori rights and interests in fisheries. The Waitangi Tribunal found that the QMS was in conflict with Māori rights to fisheries, but need not be. The Tribunal considered that the principles of the QMS were consistent with the way Māori participated in and managed fisheries.
2. Māori fisheries claims were settled in two parts. Firstly, in 1989 the Crown negotiated with Māori and reached an interim settlement that required the Crown to:
  - a. acquire and transfer 10% of quota in all existing fish stocks to Māori;
  - b. provide equivalent financial compensation if quota could not be acquired; and
  - c. provide \$10 million to establish and resource the Māori Fisheries Commission.
3. Second, in 1992 the Crown and Māori leaders negotiated and signed a Deed of Settlement (the Deed) to fully and finally settle all Treaty of Waitangi fisheries claims. The Deed provided that the Crown would give the Māori Fisheries Commission \$150 million to purchase up to 50% of Sealord Products Limited. In addition, the Crown agreed to provide the Commission with 20% of quota for species that were subsequently introduced into the QMS. Māori agreed to withdraw litigation and recognised the QMS as a legal fisheries management regime.
4. The provisions of the Deed were given legislative effect through the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (Settlement Act). In respect of commercial fishing rights, the Settlement Act declared that all claims relating to commercial fishing are fully and finally settled and cannot be enquired into by any court or tribunal.
5. The Settlement Act also provided for the non-commercial fishing interests of Māori, by stipulating that the Crown shall make policies, programmes and regulations to recognise and provide for the use and management practices of Māori in the exercise of non-commercial fishing rights.

### *Te Ohu Kaimoana Trustee Limited*

6. The 1992 Deed of Settlement established TOKM to provide for the allocation and governance of Fisheries Settlement assets. The Māori Fisheries Act 2004 (Māori Fisheries Act) further defined the role of TOKM, to act as a governance body for Māori commercial fishing interests, and establishing Aotearoa Fisheries Limited to manage commercial Fisheries Settlement assets.
7. TOKM receives commercial assets from the Crown under the Fisheries Settlement (largely fishing quota and cash generated by TOKM-held quota) and distributes those assets to iwi. TOKM is also charged as a Trustee to ensure iwi have adequate governance and management structures to receive, manage, and distribute the benefits of the Fisheries Settlement to their members.
8. Aotearoa Fisheries (trading as Moana NZ) is the holding company for most fishing assets received by TOKM. These assets include shareholdings in Sealord Products Limited and

subsidiary fishing companies. TOKM, as trustee for all Māori, holds the only voting share in Aotearoa Fisheries Limited. Both iwi and TOKM hold income shares in the company.

*TOKM's advisory role*

9. TOKM has a statutory role to manage commercial Fisheries Settlement assets until they are distributed to iwi. In this role, the Minister of Fisheries is required to consult TOKM as a representative of Māori when making sustainability decisions. TOKM is sometimes given a mandate from iwi to represent them more broadly in relation to fisheries policy and decisions.

*Māori involvement in the fishing industry*

10. In 2009, Statistics NZ valued New Zealand fishing quota at approximately \$4 billion. Māori currently hold more than 33% of all quota across a range of fish stocks. These holdings included a mix of Settlement quota and quota purchased on the open market or held by companies that have been purchased by Iwi and Māori.
11. The Fisheries Settlement has fundamentally changed the Māori economy and society. The Fisheries Settlement has provided a stable income base which has helped fund historical Settlement processes and enabled iwi investment in a wider range of businesses. The stable income stream from fishing has also funded iwi social and educational services which are of high importance to many regional iwi groups.
12. The stability and certainty provided by the QMS and the Fisheries Settlement, and the asset value of quota, has provided an environment where iwi have invested significantly in the commercial fishing sector and in aquaculture.
13. Many iwi consider that any significant changes to the fisheries management system, if developed without input by iwi or without consideration of the impacts on Māori rights and interests, would be a contemporary breach of the Treaty of Waitangi. As trustee, TOKM has been directed by many iwi to represent their interests in policy reform and legislative change processes, which they consider could affect the QMS and the value of Fisheries Settlement assets.

Released under the Official Information Act 1982

### Appendix 3: Natural Heritage Values of the Kermadec Region (FMA10)

Notable submarine features occurring within the Kermadec Region (FMA10) include the Colville Ridge, Havre Trough, Kermadec Ridge and Kermadec Trench. The Colville and Kermadec Ridges begin about 200 km northeast of Auckland extend northeast parallel to each other for more than 1000 km. They are separated from each other by Havre Trough. The Kermadec Trench is located over 100 km east of the Kermadec Ridge. It extends over 1000 km northeast from East Cape to its junction with the Louisville seamount chain northeast of Monowai Seamount. Monowai Seamount and the Louisville Ridge are located outside the Exclusive Economic Zone (EEZ).

Most of the seabed within FMA10 lies below 1000 m depth. The only intertidal and shallow coastal habitats occur on the northern Kermadec Ridge around the Kermadec Islands (Raoul Island and the Herald Group, Macauley Island, Curtis and Cheeseman Islands, L'Esperance and Havre Rocks). The Kermadec Islands are parts of large volcanoes rising over 1000 m directly from the crest of the Kermadec Ridge. North and South of the islands numerous submarine volcanoes are located west of the ridge forming what is known as the back-arc. The Star of Bengal Bank is located about 100 km south of L'Esperance Rock and is a large area of complex habitat rising to within 120 m of the surface. The shallowest point on the Colville Ridge is about 700 m depth. Maximum depth of the Havre Trough is about 3000 m. The Kermadec Trench is the second deepest oceanic trench on Earth, reaching a maximum recorded depth of 10,047 m.

#### Significant ecological and biological values of FMA10

##### *The pelagic ecosystem*

- Phytoplankton production in most of FMA10 is low compared to the waters around mainland New Zealand, Chatham Rise and the Subantarctic Islands.
- Although poorly known, FMA10, or parts of it, serve different roles for different pelagic species, including: home for some, a temporary foraging area for others, a well-defined migratory corridor, or simply somewhere that must be traversed to get to and from New Zealand and the tropics.
- Historical catches of pelagic fishes in this FMA have been small. The reported catch in the period 2003-2008 was only 185 t and comprised mostly broadbill swordfish (77 t), albacore tuna (46 t), blue shark (25 t), bigeye tuna (17 t) and moonfish (16 t). Most of this catch came from the south-west quadrant of FMA 10 (close to the outer Bay of Plenty).
- Electronic tagging of pelagic sharks (shortfin mako, great white shark) and striped marlin has shown that these species take multiple pathways away from New Zealand with some appearing to follow Colville Ridge and Kermadec Ridge north.
- At least 42 seabird species or sub-species have been recorded from FMA10. The total seabird population of the region is estimated to be 10-15 million.
- The large numbers of seabirds nesting on the Kermadec Islands, particularly Macauley Island, suggest it is likely that parts of FMA10 are important sea bird feeding areas, however use of the region by seabirds is not understood. The only species tracked from its Kermadec nesting colonies is the black-winged petrel. That study indicates extensive foraging north of the islands, over the Kermadec Trench to the east, and south as far the Subtropical Front some 1500 km away. Species nesting

in other parts of New Zealand as well as species from Australia and the Pacific Islands have also been observed foraging in FMA10.

- The marine mammal fauna of FMA10 has not been systematically surveyed, however the northern part of the region formed a well recognised 19<sup>th</sup> Century whaling ground, variously known as the French Rock or Kermadec ground. This extended from east of Norfolk Island to the Louisville Ridge. The species principally hunted in what is now FMA10 was the sperm whale. Southern right whales were taken east of FMA10 over or near the Louisville Ridge. Only bottlenose dolphin, false killer whale, humpback whale, blue whale and minke whale have been recorded at the Kermadec Islands. Of these only bottlenose dolphins are resident around the islands. Killer whales have been observed southwest of the Kermadec Islands over Havre Trough, and there are unconfirmed reports of fin whales from the region. Several other species are inferred to occur or pass through FMA10 but their occurrence within it has not been substantiated.
- Raoul Island appears to be an important part of a migratory corridor for humpback whales, and a large proportion of the Southwest Pacific population migrates past Raoul Island to Antarctica.

#### *Colville Ridge, Havre Trough and Kermadec Ridge*

- Marine biodiversity within FMA10 peaks around the Kermadec Islands. These islands support New Zealand's only true subtropical intertidal and shallow subtidal marine ecosystems and are notable as one of the most pristine marine environments in the world.
- The marine biota of the Kermadec Islands is distinct from mainland New Zealand and other oceanic islands occurring at similar latitudes. There is a characteristic presence of widespread tropical Indo-Pacific taxa and a smaller group of subtropical species shared with eastern Australia, Lord Howe Island, Norfolk Island and New Caledonia.
- Reef building stony corals occur at the Kermadec Islands but no coral reefs are present.
- Diversity is low (bryozoa being an exception) compared to other regions, reflecting the islands isolation, age and the low productivity of the surrounding waters.
- Reported levels of endemism vary between groups, e.g. 5.5% of coastal fishes, 19% of coastal mollusca (including the giant limpet *Scutellastra kermadecensis*), and 41.7% of deepwater stylasterid corals.
- Three of the 14 species of seabird nesting on the Kermadec Islands are endemic. Six million sea birds are estimated to nest on the Kermadec Islands, with Macauley Island thought to be the largest seabird colony in New Zealand.
- The coastal fish fauna is characterised by high abundance and biomass of large predatory fishes, mainly Galapagos sharks, kingfish and groupers. The only unfished population of spotted black grouper (endemic to eastern Australia and New Zealand) occurs within the Kermadec Islands Marine Reserve.
- Green turtles are common at Raoul Island. Hawksbill and leatherback turtles, both critically endangered, have also been recorded at or near the Kermadec Islands. There has been some bycatch of leatherback turtles (Critically Endangered) on tuna longlines in FMA10.

- Star of Bengal Bank supports a globally unique, near pristine population of bass (*Polyprion americanus*).
- Very little is known of the deep water biological assemblages of the Colville Ridge and Havre Trough.
- The small number of sampled locations and need to formally identify many of the species collected means it is not possible to make any strong comparisons between Colville Ridge and other regions. However, the high proportion of new species records for New Zealand found in these samples is considered surprising given how well sampled some of the Kermadec Arc volcanoes and seamounts are. The occurrence of tropical species suggests there could be an oceanographic distinction between the two ridges, however domination of the coral fauna by soft corals is similar to the composition of coral assemblages on the Kermadec Ridge.
- Species composition and abundance of deep water fishes and invertebrates on the Kermadec Ridge and back-arc volcanoes is highly variable reflecting changes in substratum from predominantly sand and mud, to lava flows, blocky pumice debris and outcropping basement rock, as well as ongoing disturbance by events such as eruptions and turbidity flows (sediment-laden water flowing rapidly down slope).
- Hard substrata in deep water are often largely bare, although dense populations of soft corals, branching stony corals and sea lilies (stalked feather stars) have been observed at some sites.
- Hard and soft substrata surrounding active hydrothermal vents are frequently covered with bacterial mats, extensive beds of two endemic giant vent mussels and associated predatory starfish, crabs and fishes.

#### *Kermadec Trench*

- Hadal trenches (i.e. those deeper than 6000 m) are among the rarest marine ecosystems, representing only 1-2% of the area of the global seafloor. Topography, low and variable food supply, high pressure and low temperature have resulted in the development of unique faunal assemblages in trenches compared to surrounding abyssal areas. Geographic isolation between trench systems has resulted in the high levels of endemism in some taxa.

Released under the provision of  
the Official Information Act 1982



<b>To Hon David Parker, Minister for the Environment</b>			Date: 17 November 2017 MfE Tracking #: 2017-B-03943
<u>Security Level</u>	In-Confidence	Number of Attachments:	One
Date Submitted:	17 November 2017	Response needed by:	None
MfE Priority:	Non-Urgent	Action Sought:	Noting

**Informational Briefing on Kermadec/Rangitāhua Ocean Sanctuary (2017-B-03943)**

s 9(2)(h)

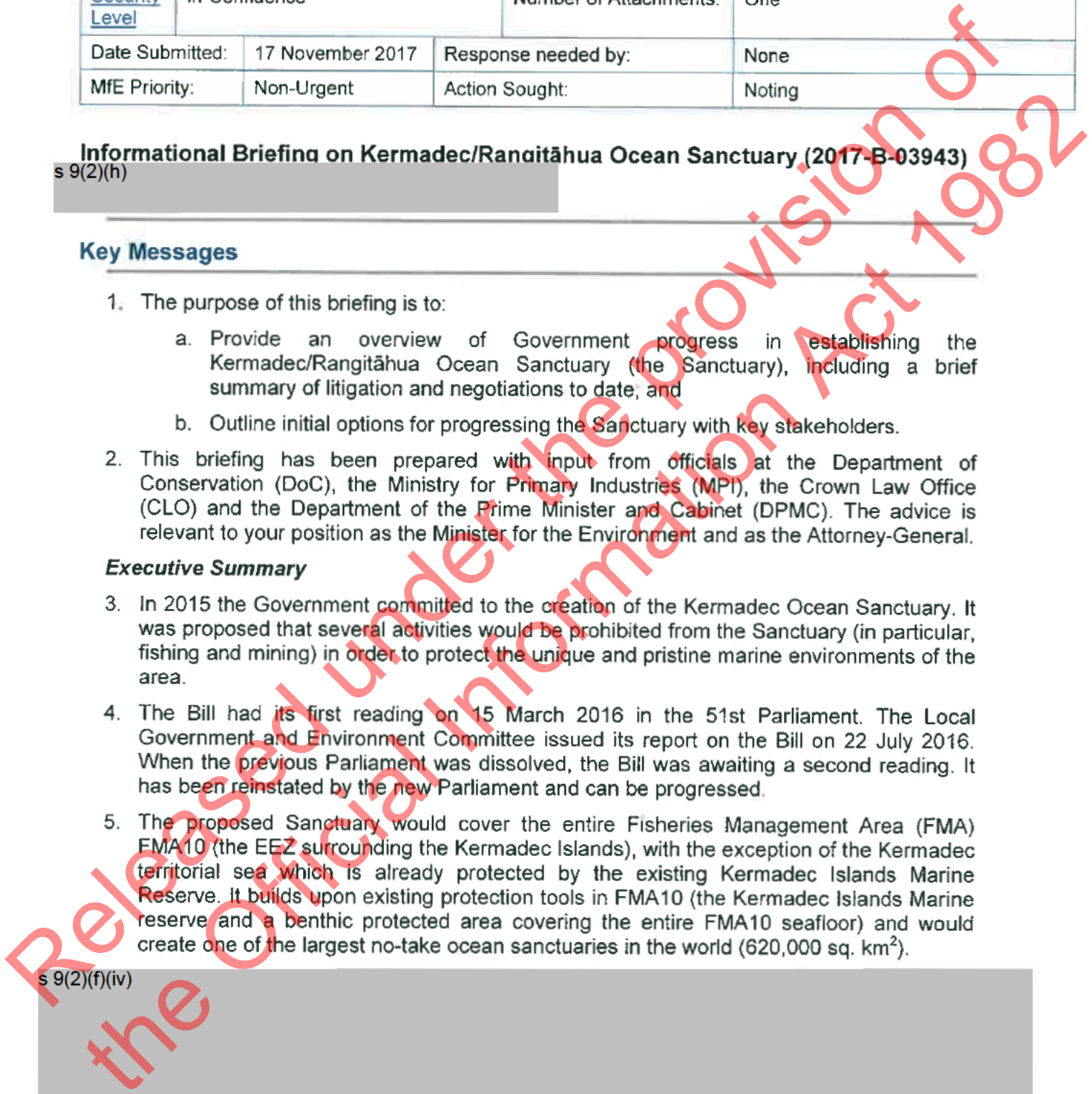
**Key Messages**

1. The purpose of this briefing is to:
  - a. Provide an overview of Government progress in establishing the Kermadec/Rangitāhua Ocean Sanctuary (the Sanctuary), including a brief summary of litigation and negotiations to date, and
  - b. Outline initial options for progressing the Sanctuary with key stakeholders.
2. This briefing has been prepared with input from officials at the Department of Conservation (DoC), the Ministry for Primary Industries (MPI), the Crown Law Office (CLO) and the Department of the Prime Minister and Cabinet (DPMC). The advice is relevant to your position as the Minister for the Environment and as the Attorney-General.

**Executive Summary**

3. In 2015 the Government committed to the creation of the Kermadec Ocean Sanctuary. It was proposed that several activities would be prohibited from the Sanctuary (in particular, fishing and mining) in order to protect the unique and pristine marine environments of the area.
4. The Bill had its first reading on 15 March 2016 in the 51st Parliament. The Local Government and Environment Committee issued its report on the Bill on 22 July 2016. When the previous Parliament was dissolved, the Bill was awaiting a second reading. It has been reinstated by the new Parliament and can be progressed.
5. The proposed Sanctuary would cover the entire Fisheries Management Area (FMA) FMA10 (the EEZ surrounding the Kermadec Islands), with the exception of the Kermadec territorial sea which is already protected by the existing Kermadec Islands Marine Reserve. It builds upon existing protection tools in FMA10 (the Kermadec Islands Marine reserve and a benthic protected area covering the entire FMA10 seafloor) and would create one of the largest no-take ocean sanctuaries in the world (620,000 sq. km<sup>2</sup>).

s 9(2)(f)(iv)



s 9(2)(f)(iv)

s 9(2)(f)(iv)

**Recommendations**

s 9(2)(f)(iv), s 9(2)(f)(iv) and s9(2)(g)(i)

**Signatures**

Glenn Wigley  
Director, Marine Environmental Risk and Science  
Ministry for the Environment

16/11/17

Hon David Parker  
Minister for the Environment

20/11/17  
Date

**Ministry for the Environment contacts**

*To discuss at weekly meetings*

Position	Name	Cell phone	1 <sup>st</sup> contact
Principal author	s 9(2)(a)	s 9(2)(a)	
Responsible Manager	Lou Hunt	022-066-8764	
Director	Glenn Wigley	027-491-7806	✓

Released under the Official Information Act 1982

## Supporting Material

---

12. The previous administration introduced the Kermadec Ocean Sanctuary Bill into Parliament in March 2016. The purpose of the Bill was to provide greater protection for the Kermadec region and help to ensure sustainable management of the Kermadec marine environment now and in the future (see Background in **Appendix One**).
13. The Bill was reported by Select Committee and awaits a second reading. One of the first acts of the new Parliament was to reinstate, by resolution, the business of the House that lapsed with the dissolution of the last Parliament. The Bill resumes at the same stage it reached during the last Parliament.
14. The Select Committee made significant changes to the Bill largely in response to submissions by Te Aupori and other iwi authorities and TOKM. These changes aimed to increase the role and decision-making power and influence of iwi authorities, iwi representatives and TOKM. Changes to the Bill included:

s 9(2)(f)(iv)

s  
9(2)  
(f)(iv)

s 9(2)(h)

s 9(2)(h)

s 9(2)(f)(iv)

Released under the provision of  
the Official Information Act 1982

s 9(2)(f)(iv) and s9(2)(g)(i)

s 9(2)(f)(iv) and s9(2)(g)(i)

Released under the provision of  
the Official Information Act 1982

s 9(2)(f)(iv) and s9(2)(g)(i)

s 9(2)(f)(iv)

Released under the provision of  
the Official Information Act 1982

s 9(2)(f)(iv)

### **Consultation and Collaboration**

---

48. This briefing was developed with input from officials at the Ministry of Primary Industries, Department of Conservation, Crown Law Office, and Department of Prime Minister and Cabinet.

s 9(2)(h)

s 9(2)(f)(iv)

### **Next Steps**

---

52. Given the number of options that could be pursued for establishing protection in the Kermadec area, we recommend that you hold early discussions with your fellow Ministers, in the first instance the Minister of Conservation, the Minister of Fisheries, the Minister for Crown/Māori Relations, and the Minister for Māori Development. The proposed Sanctuary cuts across a range of issues and portfolios, and a coordinated government response is important. We recommend further engagement with iwi and stakeholders before any final decisions are made on the proposed Sanctuary.

## Attachments

---

- **Appendix One:** Background on the Kermadec/Rangitāhua Ocean Sanctuary s 9(2)(h)
- **Appendix Three:** Provisions for fishing and indigenous communities and interests in the management of large MPAs

Released under the provision of  
the Official Information Act 1982

## Appendices

### Appendix One: Background on the Kermadec/Rangitāhua Ocean Sanctuary

1. The Kermadec/Rangitāhua region is the northern most part of New Zealand and our Exclusive Economic Zone (EEZ).
2. The Kermadec region's biodiversity and relatively unspoiled nature gives the region a crucial role in ocean ecosystems, including as a migration route and safe haven for far ranging species (e.g. seabirds, sharks, turtles and whales).
3. The region is one of the most isolated and least modified parts of New Zealand's marine environment and is the only place where temperate, subtropical and tropical species are found together.
4. Many of the species that live in and pass through the ocean around the Kermadec islands exist only there, or are critically endangered in other parts of the world (e.g. some species of bryozoans and sea turtle).
5. This makes the region valuable to science and for furthering our global understanding of our marine environment, ecosystems and the ocean's life supporting processes.
6. Marine life in the Kermadec region is currently protected by the following protection:
  - Kermadec Islands Marine Reserve providing for full no take encompassing the entire territorial sea around the islands (established in 1990), and is complementary to terrestrial protection on the islands themselves (established in 1939).
  - A benthic protected area (BPA) established in 2007 through regulations, which prevents dredging and bottom trawl fishing methods in the entire FMA10 area.

#### *Fishing activities in the Kermadecs*

7. There are two types of fish stocks that can be fished in FMA10 – Quota Management Area 10 (QMA10) stock and Highly Migratory Species (HMS) stock.
8. Under the Fisheries Settlement the Crown transferred the agreed QMA10 quota (just under 16%) to TOKM on behalf of iwi. Please note that the Kermadec Islands Marine Reserve was created before the Treaty of Waitangi (Fisheries Claims) Settlement Act 1992 (the Settlement Act), and associated allocation of QMA10 quota to TOKM.
9. The Crown is the only other major quota holder for QMA10 stocks (around 84%).
10. QMA10 stock can only be fished in FMA10, whereas HMS stock can be fished throughout New Zealand waters. HMS species that are found in FMA10 are part of a common stock across a broader range of New Zealand waters (e.g. bigeye tuna). These species are not permanently resident in the region, moving between the High Seas and other parts of the EEZ.
11. Practically all of the fishing that has occurred in FMA10 has been for HMS stock. However, less than 2% of HMS quota for each species is caught within FMA10 (see **Appendix 2**). No fishing currently occurs for QMA10 stocks and we are not aware of these stocks ever having been fished at commercial levels.
12. Forty marine reserves have been developed since the Settlement Act, but they have only ever closed off small portions of FMAs, so quota species can continue to be fished outside the reserve. The proposed Sanctuary is different because it would prohibit fishing in the entire FMA10 (when combined with the existing Kermadec Islands Marine Reserve).

s 9(2)(f)(iv)

Released under the provision of  
the Official Information Act 1982

Released under the provision of  
the Official Information Act 1982

**Appendix Three: Provisions for fishing and indigenous communities and interests in the management of large MPAs (note this review is not exhaustive)**

MPA	Commercial fishing	Customary and/or non-commercial fishing	Involvement of indigenous communities and interests in the management of the MPA
<b>Argo-Rowley Terrace Commonwealth Marine Reserve (Australia)</b>	Yes. There are five types of use zones in the Marine Reserve, two of which allow commercial fishing (IUCN categories IV and VI).	Yes. There are five types of use zones in the Marine Reserve, three of which allow non-commercial fishing (IUCN categories II, IV and VI).	-
<b>Coral Sea Commonwealth Marine Reserve (Australia)</b>	Yes. There are six types of use zones in the Marine Reserve. All but one zone (IUCN category II) allow a range of commercial fishing techniques in 49% of the reserve.	Yes. There are six types of use zones in the Marine Reserve. All but one zone (IUCN category II) allow non-commercial fishing in 49% of the reserve.	Indigenous people and organisations are partners in the management of the Marine Reserve.  Indigenous customs, practices and knowledge inform relevant management planning and activities.
<b>Norfolk Commonwealth Marine Reserve (Australia)</b>	Yes. There are six types of use zones in the Marine Reserve. Four zones allow a range of commercial fishing techniques (IUCN categories IV and VI).	Yes. There are six types of use zones in the Marine Reserve. All but one zone (IUCN category II) allow non-commercial fishing.	-
<b>Easter Island Marine Park (Chile)</b>	Yes, to an extent. Local Rapa Nui fisherman can fish out to 50 nautical miles on a restricted basis.	Yes, local fisherman can fish out to 50 nautical miles.	Rapa Nui communities were involved in the development of the proposed marine park.
<b>Motu Motiro Hiva Marine Park (Chile)</b>	No (100% no-take).	No (100% no-take).	-
<b>Parque Marino Nazca-Desventuradas (Chile)</b>	No (100% no-take).	No (100% no-take).	-
<b>Marae Moana—Cook Islands Marine Park (Cook Islands)</b>	Yes (likely to be 20% no take). Multiple use zoned area- however, no large scale fishing or seabed	-	Supported by traditional leaders.

MPA	Commercial fishing	Customary and/or non-commercial fishing	Involvement of indigenous communities and interests in the management of the MPA
	mining allowed.		
<b>Le parc naturel de la mer de Corail— Natural Park of the Coral Sea (France)</b>	The park will be a multiple use area with various zones for economic activity and conservation.	The park will be a multiple use area with various zones for economic activity and conservation.	The Management Committee includes representatives of all stakeholders in the maritime area of New Caledonia.
<b>Palau National Marine Sanctuary (Palau)</b>	Yes, to an extent. There is a designated domestic fishing zone in 20% of the MPA for local fishermen and small-scale commercial fisherman (can be foreign). However, permits are needed. Fishing can also occur in the territorial sea. Note that Palau is planning to ban the export of fish by 2020.	Yes. There is a designated domestic fishing zone in 20% of the MPA for local fishermen and small-scale commercial fisherman (can be foreign). However, permits are needed. Fishing can also occur in the territorial sea. These are traditionally recognised fishing areas.	The Palau National Marine Sanctuary Executive Committee includes members who represent: <ul style="list-style-type: none"> <li>• Council of Chiefs;</li> <li>• A stakeholder representative;</li> <li>• Belau Boaters Association;</li> <li>• Ebiil Society.</li> </ul>
<b>Pitcairn Islands Marine Reserve (UK)</b>	No commercial fishing.	Yes – traditional and cultural non-commercial fishing by Pitcairn Islanders and their visitors is permitted in the territorial sea of the four islands. Such fishing is also allowed within 2 nautical miles of the summit of 40 Mile Reef and in the transit zone between Pitcairn Island and 40 Mile Reef.	-
<b>Phoenix Islands Protected Area and World Heritage Site (Republic of Kiribati)</b>	No (100% no-take).	No (100% no-take).	Involvement of residents in the management of the MPA.
<b>Ascension Island</b>	Yes. Commercial fishing	Yes. Fishing will be	-

MPA	Commercial fishing	Customary and/or non-commercial fishing	Involvement of indigenous communities and interests in the management of the MPA
<i>(UK) (proposed but not yet designed)</i>	will be allowed in just under half of the MPA in the northern half of the Sanctuary, from 50 nautical miles to 200 nautical miles.	allowed in just under half of the MPA in the northern half of the Sanctuary, from 50 nautical miles to 200 nautical miles.	
South Orkneys MPA (UK/ Argentina)	No (100% no-take).	No (100% no-take).	-
Papahānaumokuākea Marine National Monument and World Heritage Site (USA)	No.	Limited amount of customary fishing – cultural practices are allowed to occur with a permit, this includes but is not limited to, the non-commercial use of Monument resources for direct personal consumption while in the Monument.	The Office of Hawaiian Affairs represents Native Hawaiian interests on the Monument's management board and co-manages the MPA.  There is a Native Hawaiian Culture and History Action Plan for the Monument.
Pacific Remote Islands Marine National Monument (USA)	No (100% no-take). However, the Monument does not cover all of the EEZ around the seven islands; therefore some commercial fishing is allowed.	Non-commercial fishing is allowed to occur with a permit. There is a provision called "customary exchange" that allows those who fish in the monuments to receive compensation to cover the expenses to travel to the remote locations. Acknowledges this cultural tradition and allows it to continue without it being considered a profit, which would be commercial fishing.	There is indigenous representation on some of the advisory councils.

Released under the provision of the Official Information Act 1982